

(1962) 08 MP CK 0011

Madhya Pradesh High Court

Case No: M.P. No. 135 of 1962

Amalgamated Coal Fields Ltd.

APPELLANT

Vs

Collector, Chhindwara

RESPONDENT

Date of Decision: Aug. 26, 1962

Acts Referred:

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Land Revenue Code, 1959 - Section 247, 247(4), 253, 262(1), 57(1)

Citation: (1963) JLJ 67

Hon'ble Judges: P.V. Dixit, C.J; K.L. Pandey, J

Bench: Division Bench

Advocate: A.P. Sen and A.H. Saifi, for the Appellant; R.J. Bhave, Govt. Advocate for State and J. N. Nagrath, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.L. Pandey, J.

This is a petition under Article 226 of the Constitution to call up and quash by certiorari two orders one passed by the Sub Divisional Officer, Chhindwara, on 3 October 1961 whereby, u/s 247(4) of the Madhya Pradesh Land Revenue Code of 1959, he awarded Rs. 1,812/- as compensation to Mst. Bhano and the other passed by the Collector on 19 March 1962 by which he dismissed the Petitioner's appeal against the earlier order. The Petitioner has also prayed for a writ of mandamus interdicting the enforcement of the award of compensation.

2. The Petitioner holds a lease of village Datta Badhi to mine coal from the sub soil. In the year 1953, the Petitioner carried out in the mine what are called depillaring operations without entering on the surface of the land held by Mst. Bhano. On 7 January 1958, Mst. Bhano made an application u/s 228 of the Madhya Pradesh Land Revenue Code, 1954, for compensation for the damage caused to her house, well,

fields and crops resulting from the aforesaid depillaring operations. In answer, while denying that the damage, if any, was attributable to the de-pillaring operations carried out in the mine about five years before 1958, the Petitioner stated that Section 228 of the Code of 1954 did not apply to the claim and the Revenue Courts had no jurisdiction to deal with the matter. Overruling this contention, the Sub-Divisional Officer made the impugned order dated 3 October 1961 and, as already indicated, the Collector dismissed the Petitioner's appeal against that order.

3. Since there is some difference in the words employed in Section 247 of the Code of 1959, it is necessary to point out an error which has crept in the orders of the two Revenue Courts. Mst. Bhano made her application u/s 228 of the Code of 1954. Section 262 (1) of the 1959 Code enacts:

Save as otherwise expressly provided in this Code, all cases pending before the State Government or any Revenue Court in any region immediately before the coming into force of this Code, whether in appeal, revision, review or otherwise shall be decided in accordance with the provisions of the appropriate law, which would have been applicable to them had this Code not been passed.

There is no provision in the 1959 Code applying Section 247 of that Code to proceedings pending at the commencement of that Code on 2 October 1959. That being so, the application had to be considered and disposed of in accordance with the law as enacted in section 228 of the 1954 Code.

4 The relevant provisions of Section 228 of the 1954 Code are a verbatim reproduction of those enacted in Section 218 of the Central Provinces Land Revenue Act (II of 1917). They read:

228 (1) Unless it is otherwise expressly provided by the terms of a grant made by the Government, the right to all minerals, mines and quarries shall vest in the State Government which shall have all powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of offices, work-men's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram lines, and any or her purposes which the State Government may declare to be subsidiary to mining and quarrying,

(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in Sub-sections (1) and (2) should be exercised, the Deputy Commissioner may, by an order in writing, subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned:

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Deputy Commissioner, or, if his award is not accepted, by the Civil Court, as nearly as may be in accordance with the provisions of the Land, Acquisition Act, 1894.

(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Deputy Commissioner, unless the compensation has been determined and tendered to the persons whose rights are infringed.

(6) If an assignee of the Government fails to pay compensation as provided in Sub-section (4), the Deputy Commissioner may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue.

(7) Any person, who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him, be liable, on the order in writing of the Deputy Commissioner, to pay penalty not exceeding a sum calculated at double the market value of the minerals so extracted or removed:

Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Deputy Commissioner may impose.

(8) Without prejudice to the provisions in Sub-section (7), the Deputy Commissioner may seize and confiscate any mineral extracted or removed from any mine or quarry the right to which vests in, and has not been assigned by, the Government.

Explanation.-In this section, "minerals" include any sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose.

5. We had occasion to consider a matter arising u/s 218 of the Land Revenue Act of 1917 in *Amalgamated Coalfields Ltd. v. Board of Revenue 1961 RN 318*. We then state:

In our opinion, the provisions of Sub-section (4) of Section 218 of the Act were a part of the integrated process by which the holder of a mineral concession was enabled to occupy such land belonging to another as might be necessary for mining and quarrying and purposes subsidiary thereto. [Page 19]

6. In the instant case, the Collector thinks that Sub-section (4) of Section 247 of the Code of 1959 is an independent provision. This is what he stated:

The expression "if in the exercise of the rights referred to over any land" has a reference to the right in Sub-section (1) and over any land" is used in relation to the land demised to the mining concessionaire, read with Section 57(1) of the Code. In view of this matter, Sub-section (4) of section 247 is independent inasmuch as for the contravention of Sub-section (5) a penalty is provided in Section 253 of Land Revenue Code, 1959, in order to carry out the intention of the Legislature.

The ruling reported in 1961 RN 318. Amalgamated Coalfields Ltd., Calcutta v. Board of Revenue, M. P. and others, and relied upon by the Appellant is not applicable to the facts of this case.

7. Having heard the counsel, we have formed the opinion that the view taken by the two Revenue Courts is clearly erroneous and, in dealing with the matter, they arrogated to themselves a jurisdiction which was not given to them u/s 228 of the 1954 Code. It is contended before us, as it was successfully urged before the Collector, that the expression "the exercise of the right herein referred to over any land" occurring in Sub-section (4) of Section 228 has reference to the right mentioned in Sub-sections (1) and (2) of that section including the right over minerals, mines and quarries. Therefore, even apart from delegation envisaged by Sub-section (3), if the concessionaire, by the very act of working the mine, in directly causes disturbance of the surface, he is within the mischief of Sub-section (4). We are of the view that this contention cannot be accepted.

8. In Sub-section (1) of Section 228, while it is declared that the right to all minerals, mines and quarries vests in the State, it is also enacted that the State Government shall have all powers necessary for the proper enjoyment of such rights. Salmond states in his treatise on Jurisprudence:

A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons.

The correlative of a power is a subjection..... Subjection, in the sense in which that term is now being used, connotes the presence of power vested in someone else, as against the person in subjection [Pages 274-5

This is what stated in Earl Jowitt's Dictionary of English Law:

Power is sometimes used in the same sense as right," as when we speak of the powers of user and disposition which the owner of property has over it; but strictly speaking a power is that which creates a special or exceptional right, or enables a person to do something which he could not otherwise do.

This is quoted with approval in Black's Law Dictionary. In Stroud's Judicial Dictionary, the meaning of the word "power" is thus explained:

Power does not apply to the sort of interest which the ownership gives.

.....

A power is an authority reserved by or limited to, a person to dispose, either wholly or partially, of real or personal property, either for his own benefit or for that of others. The word is used as a technical term, and is distinct from the dominion which a man has over his own estate by virtue of ownership.

It will thus be seen that, in Sub-section (1), there are two separate and distinct concepts the concept of a vested right and the concept of powers necessary for enjoyment of that vested right.

9. Unfortunately, in Sub-section (2), the two concepts appear to have been mixed up because it is declared that the right to a mine includes the right of access to land for the purpose of mining and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tramlines, and any other purposes which the State Government may declare to be subsidiary to mining. Now, if the right to a mine included the other rights specified in Sub-section (2), then those other rights should also be regarded under Sub-section (1) as vested in the State in the same sense and no one can be heard to complain that his rights were infringed by the exercise of such other rights. Again, as we would show in the sequel, while the enjoyment of the right to minerals, mines and quarries is unfettered, the exercise of the subsidiary powers necessary for the proper enjoyment of that right is hedged with conditions and is also burdened with the liability to pay compensations to third persons whose rights are thereby infringed. Although, having due regard to the two different concepts already noticed, Sub-section (2) might have been more clearly worded, we are of opinion that it specifies and delimits the collateral powers necessary for the proper enjoyment of "all minerals, mines and quarries" indicated in Sub-section (1). This view finds support in Sub-section (3) in which the distinction between the two concepts reappears. That Sub-section speaks about assignment of the right over minerals, mines or quarries in contradistinction to delegation to the assignee of the powers specified in subsection (1) and (2). It will be readily seen that when the surface of the land required for use belongs to the Government or to the assignee, there can be no question of delegation of the powers contemplated by Sub-section (3).

10. Sub-section (4) speaks about certain consequences of "the exercise of the right herein referred to over any land". The land envisaged by the Sub-section and the next is the land held by another person because compensation is required to be paid to him by the Government or the assignee and, without the previous sanction

of the Collector, the assignee cannot "enter on or occupy the surface" of the land unless the compensation has been determined and tendered to that person. It was urged by the Government Advocate that the expression "over any land" occurring in Sub-section (4) should be read as meaning "in relation to any land". He made this submission to be able to argue that the right to minerals is a right in relation to land and, if, in the exercise of this right, the surface of any land is disturbed, it would be covered by Sub-section (4). We think this contention is clearly untenable because the word "land", as defined in Section 2(9) of the 1954 Code, means a portion of the earth's surface. In our opinion, the word "right" in Sub-section (4) should be construed in the sense in which that word occurring for the second time in Sub-section (2) has been used. In that view, the expression "in the exercise of the right herein referred to over any land" occurring in Sub-section (4) relates to the exercise of the powers specified in Sub-section (2) over lands held by third persons. It will be seen that these powers cannot be legally exercised without being delegated under Sub-section (3) and without either the previous sanction of the Collector or the determination of the compensation under Sub-section (4) and the tender thereof to the persons whose rights are thereby infringed.

11. Under Sub-section (4), third persons holding land are entitled to compensation if their rights are infringed by the assignee "by the occupation or disturbance of the surface of such land". "Disturbance", which is a large word, may well include disturbance indirectly caused by subsidence as a result of depillaring operations. But, however wide that word may be in its literal sense, it should be construed as being limited to the object of the enactment. That being so, its true sense should be gathered, not so much from the strictly grammatical or etymological meaning or even from its popular use, as from the subject matter of the enactment and the context in which it is used. As shown, having regard to the subject matter and the context, the word "disturbance" is here limited to the disturbance caused by overt acts in exercise of the powers specified in Sub-section (2).

12. In the view we have taken, Sub-section (4) of Section 228 does not apply to disturbance or other damage caused to the surface of land otherwise than by the exercise of the powers specified in Sub-section (2) and delegated to the assignee under Sub-section (3).

13. The result is that the petition succeeds and is allowed. The orders dated 3 October 1961 and 19 March 1962 are quashed and the Respondents 1 and 2 are restrained from giving effect to the award of Rs. 1, 812/- as compensation. The Respondent 3 shall bear her own costs and pay those incurred by the Petitioner, to whom the security amount shall also be refunded earing fee Rs. 50/-.